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Universal Transport II d/b/a Medstar Medicar and International Brotherhood of Teamsters, Local 714. Case 13-CA-43908

June 29, 2007

DECISION AND ORDER

BY MEMBERS LIEBMAN, SCHAUMBER,
AND KIRSANOW

The General Counsel seeks default judgment in this case on the ground that the Respondent has failed to file an answer to the complaint. Upon a charge and a first amended charge filed by the Union on March 19 and April 5, 2007, respectively, the General Counsel issued the complaint on April 18, 2007, against Universal Transport II, LLC d/b/a Medstar Medicar, the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the Act. The Respondent failed to file an answer.

On May 30, 2007, the General Counsel filed a Motion for Default Judgment with the Board. Thereafter, on June 5, 2007, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Default Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively states that the answer must be received by the Regional Office on or before May 2, 2007, or postmarked on or before May 1, 2007. The Respondent was additionally advised that an answer may also be filed electronically by using the E-filing system on the Agency's website. Further, the undisputed allegations in the General Counsel's motion disclose that the Region, by certified letter dated May 9, 2007 notified the Respondent that if an answer was not filed by close of business on May 16, 2007, a Motion for Default Judgment would be filed.¹

¹ As set forth in the General Counsel's Motion, on May 11, 2007, the Respondent, through Robert Kaplan, Employer Representative, contacted counsel for the General Counsel indicating he had not received a copy of the May 9, 2007 "last chance" letter and preferred that a different address, other than the address of the facility be used. Counsel for the General Counsel explained that per the May 9, 2007 letter, the

In the absence of good cause being shown for the failure to file an answer, we grant the General Counsel's Motion for Default Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a corporation, with an office and place of business in Bellwood, Illinois, has been engaged in the business of nonmedical transportation of nursing home patients.

During the past calendar year, a representative period, the Respondent, in conducting its business operations described above, purchased and received at its Bellwood facility goods valued in excess of \$50,000 directly from points outside the State of Illinois.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, Robert Kaplan held the position of the Respondent's president and owner, and has been a supervisor of the Respondent within the meaning of Section 2(13) of the Act:

The following employees of the Respondent, herein called the Unit, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time drivers, dispatchers, mechanics, attendants, call takers, billers, the trainer and the warehouse employee employed by the Employer at its facility currently located at 2843 West Washington, Bellwood, Illinois; but excluding all other employees, office clerical employees, and guards, professional employees and supervisors as defined in the National Labor Relations Act.

On January 4, 2007, the Union was certified as the exclusive collective-bargaining representative of the Unit.

At all times since January 4, 2007, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the Unit.

Respondent's answer was still due by close of business on May 16, 2007. Kaplan indicated that he understood, but further added that the parties would probably settle the matter and requested that a copy of the complaint and a copy of the proposed Settlement Agreement be sent to him. On the same day, counsel for the General Counsel sent Kaplan a copy, by certified mail, and a faxed copy of the May 9, 2007 letter, a copy of the complaint and Notice of Hearing and a copy of the proposed Settlement Agreement.

Since about January 4, 2007, the Respondent has failed and refused to meet and bargain on reasonable dates and times with the Union as the exclusive collective-bargaining representative.

By the conduct described above, the Respondent has failed and refused to bargain in good faith with the Union as the exclusive collective-bargaining representative of the Unit.

About January 5, 2007, and January 16, 2007, the Union, by letter, requested that the Respondent furnish the Union with the following information regarding unit employees:

- (i) The number of employees currently working at Respondent's facility
- (ii) Wages of each employee
- (iii) Classification/job descriptions
- (iv) Drug/alcohol policy
- (v) Health & Welfare plan/description and how many employees participate and the cost to each employee
- (vi) List of all current fringe benefits.

Since about March 7, 2007, verbally, and March 12, 2007, by letter, the Union has requested that the Respondent furnish the Union with information concerning the Respondent's sale and closing of its business and the effective date thereof.

The information requested by the Union, as described above, is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the Unit.

Since about the dates described above, the Respondent, by Robert Kaplan, has failed and refused to furnish the Union with the information requested by it.

CONCLUSIONS OF LAW

By failing and refusing to meet and bargain with the Union, and to provide the Union with information it requested regarding unit employees and information concerning its decision to sell and closing of its business and the effective date thereof, the Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent violated Section 8(a)(5) and

(1) by failing and refusing since about January 4, 2007, to meet and bargain with the Union, we shall order the Respondent, on request, to meet and bargain in good faith with the Union as the exclusive collective-bargaining representative of the unit, and if an understanding is reached, to embody the understanding in a signed agreement.

In addition, to remedy the Respondent's failure and refusal to furnish the Union with the information it requested in its letters dated January 5, 2007 and January 16, 2007, regarding unit employees, and its verbal request dated March 7, 2007 and its request by letter dated March 12, 2007 concerning the Respondent's sale and closing of its business and the effective date thereof, we shall order the Respondent to provide the Union with the information it requested.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by the law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962), *enfd.* 328 F.2d 600 (5th Cir. 1964), *cert. denied* 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), *enfd.* 350 F.2d 57 (10th Cir. 1965).

Finally, in view of the fact that the Respondent has announced its intention to sell and to close its business, we shall order the Respondent to mail a copy of the attached notice to the Union and to the last known addresses of the unit employees who were employed by the Respondent when it closed or announced the closure of its business, in order to inform them of the outcome of this proceeding.

ORDER

The National Labor Relations Board orders that the Respondent, Universal Transportation II, LLC d/b/a Medstar Medistar, Bellwood, Illinois, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to meet and bargain collectively and in good faith with International Brotherhood of Teamsters, Local 714, as the exclusive collective-bargaining representative of the employees in the following unit:

All full-time and regular part-time drivers, dispatchers, mechanics, attendants, call takers, billers, the trainer and the warehouse employee employed by the Employer at its facility currently located at 2843 West Washington, Bellwood, Illinois; but excluding all other employees, office clerical employees, and guards, pro-

fessional employees and supervisors as defined in the National Labor Relations Act.

(b) Failing and refusing to provide the Union with information that is relevant and necessary to the performance of its duties as the exclusive collective-bargaining representative of the unit employees.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, meet and bargain with the Union as the exclusive collective-bargaining representative of the unit employees on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement.

(b) Furnish to the Union the information it requested on January 4, 2007 regarding unit employees.

(c) Furnish the Union with the information it requested on March 7, 2007 and March 17, 2007 concerning its sale and closing of its business and the effective date of closing.

(d) Within 14 days after service by the Region, duplicate and mail, at its own expense and after being signed by the Respondent's authorized representative, copies of the attached notice marked "Appendix"² to all unit employees who were employed by the Respondent at the time that it announced its decision to sell or close its business in Bellwood, Illinois.

(e) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. June 29, 2007

Wilma B. Liebman, Member

Peter C. Schaumber, Member

Peter N. Kirsanow Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

² If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to meet and bargain collectively and in good faith with the International Brotherhood of Teamsters, Local 714 as the exclusive collective-bargaining representative of our employees in the following unit:

All full-time and regular part-time drivers, dispatchers, mechanics, attendants, call takers, billers, the trainer and the warehouse employee employed by us at our facility currently located at 2843 West Washington, Bellwood, Illinois; but excluding all other employees, office clerical employees, and guards, professional employees and supervisors as defined in the National Labor Relations Act.

WE WILL NOT fail and refuse to furnish the Union with information that is relevant and necessary to the performance of its duties as the exclusive collective-bargaining representative of the unit employees.

WE WILL NOT fail and refuse to furnish the Union with information concerning our sale and closing of our business and the effective date thereof.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, meet and bargain with the Union as the exclusive collective-bargaining representative of the unit employees on terms and conditions of employment, and put in writing and sign any agreement reached.

WE WILL furnish the Union the information it requested on January 5 and 16, 2007, regarding unit employees.

WE WILL furnish the Union the information it requested on March 7 and 12, 2007 concerning our sale and closing of our business and the effective date thereof.

UNIVERSAL TRANSPORTATION II
D/B/A MEDSTAR MEDICAR